

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

**IN RE AMAZON SUBSCRIPTION
SERVICES LITIGATION**

Case No.: 2:22-cv-00910-RSM

**STIPULATED MOTION AND ORDER
FOR PLAINTIFFS TO FILE SECOND
AMENDED COMPLAINT AND SET
BRIEFING SCHEDULE**

NOTE ON MOTION CALENDAR:
APRIL 12, 2024

On February 28, 2024, the Court issued an order granting in part and denying in part Amazon's motion to consolidate four actions: *Daly v. Amazon.com, Inc.*, No. 2:22-cv-00910-RSM, *Dorobiala v. Amazon.com, Inc.*, No. 2:22-cv-01600-RSM, *Adams v. Amazon.com, Inc.*, No. 2:23-cv-00913-RSM, and *Nicholas v. Amazon.com, Inc.*, No. 2:22-cv-01616-RSM. Dkt. 38 (Consolidation Order). By way of this order, the Court consolidated *Daly*, *Dorobiala*, and *Adams*. The Court denied consolidation with respect to *Nicholas*, however, noting that, "[i]n this Court's previous Order, Dkt. #37, the Court relied on Plaintiff's prima facie showing that the Amazon Checkout Pages, Acknowledgment Emails, and cancellation processes were similar regarding Amazon Automatic Renewal subscription offerings like Amazon Prime, Audible, Kindle Unlimited, etc. Upon review of the Complaint in *Nicholas*, the 'Subscribe & Save' products are different from these distinctive Amazon subscriptions." Consolidation Order at 6.

Before issuing the Consolidation Order, on February 26, 2024, the Court granted in part and denied in part Amazon's motion to dismiss the *Daly* Complaint. Dkt. 37. In its order consolidating *Daly* with the *Dorobiala* and *Adams* cases, the Court also directed that "Plaintiffs

1 must file a consolidated complaint consistent with this Court's previous Order, Dkt. #37, within
2 thirty (30) days of the date of this Order." Consolidation Order at 9.

3 On March 29, 2024, Plaintiffs filed the First Consolidated Amended Complaint ("FCAC").
4 Dkt. 39. The FCAC includes claims based on Subscribe & Save in addition to other Amazon
5 subscription services.

6 In light of the FCAC's inclusion of claims regarding Subscribe & Save, Amazon reached
7 out to meet and confer with Plaintiffs' counsel about consolidation of *Nicholas* and *Subscription*
8 *Services*, and notified Plaintiffs that it planned to file a motion to consolidate by Friday, April 12
9 (14 days after the FCAC was filed). Plaintiffs have now agreed that they will not pursue any
10 claims based on Subscribe & Save in this consolidated action, and they will amend the FCAC
11 accordingly.

12 Amazon also contends that the FCAC includes claims and allegations that the Court
13 rejected when granting in part and denying in part Amazon's motion to dismiss in *Daly*, and that
14 the FCAC is subject to a motion to dismiss and/or strike. Plaintiffs disagree. Amazon has provided
15 Plaintiffs a list of allegations by paragraph number that Amazon contends are inconsistent with the
16 Court's order on Amazon's motion to dismiss. Plaintiffs have agreed to review and consider these
17 points, and are in the process of doing so, in the hope of resolving or narrowing those issues without
18 Court intervention. The Parties have also met and conferred regarding a broader case schedule,
19 and propose to submit it to the Court for its consideration, including as to any dates upon which
20 they cannot agree, shortly.

21 In view of these developments, Plaintiffs and Defendants have stipulated to and jointly
22 request that the Court approve the following schedule:

- 23 1. On or before April 19, 2024, Plaintiffs will file a Second Consolidated Amended
24 Complaint ("SCAC"), which will remove any claims for relief based on Subscribe
25 & Save;
- 26 2. Amazon will have until May 20, 2024 to file a motion to dismiss or strike, or
27 otherwise respond to, the SCAC;

3. Plaintiffs' opposition to any motion to dismiss or strike is due by June 19, 2024¹;

4. Amazon's reply in support of any motion to dismiss the SCAC or strike is due by July 3, 2024.

Dated: April 12, 2024

Respectfully Submitted,

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¹ It is Plaintiff's position that Fed. R. Civ. P. 15(a)(1)(B) allows them as a matter of right, at their election, to amend the currently operative consolidated complaint in response to Amazon's anticipated motion to dismiss (or to its answer), where the Court ordered the filing of a consolidated complaint and where Amazon has neither filed an answer nor moved to dismiss in the *Dorobiala* and *Adams* matters. Amazon disagrees. By agreeing to a schedule for an opposition to Amazon's anticipated motion to dismiss, Plaintiffs reserve rights with respect to, and do not waive, this position. Plaintiffs intend to continue discussing this matter with Amazon. Plaintiffs also reserve rights to raise this matter with the Court if the Parties cannot agree, including, without limitation, by doing so in the broader case schedule the Parties intend to propose.

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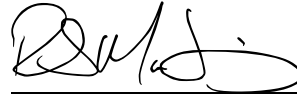
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Attorneys for Plaintiffs

1 **SO ORDERED.**

2 DATED this 16th day of April, 2024.

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5 RICARDO S. MARTINEZ
6 UNITED STATES DISTRICT JUDGE
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